

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**LAKE AIR CAPITAL, LLC,  
Plaintiff,**

v.

**Case No. 13-136500-CK  
Hon. James M. Alexander**

**RIDGEWAY OFFICE CENTRE, LLC, ET AL,  
Defendants.**

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**OPINION AND ORDER RE: SUMMARY DISPOSITION**

This matter is before the Court on Defendants’ Motion for Summary Disposition. In October 2006, Plaintiff loaned Defendant Ridgeway \$2.4 million to finance Ridgeway’s purchase of an office building located at 28800 Orchard Lake Road in Farmington Hills. The parties’ agreement was memorialized in a series of documents. Parts of these agreements were amended in 2010, which is relevant to the present suit. These documents, in part, require Defendant to pay property taxes and insurance.

In its Complaint, Plaintiff alleges that Defendants breached the agreements by “failing to pay real property taxes as required by the Loan Documents.” (Complaint, paragraph 23). Plaintiff also alleges that “Plaintiff notified Defendants of the defaults but Defendants have failed to cure or otherwise rectify such default.” (Complaint, paragraph 24). As a result of said breach, Plaintiff filed the present suit on the following claims: (Count I) Appointment of Receiver; (Count II) Request for Preliminary Injunction; (Count III) Breach of Contract; and (Count IV) Foreclosure of Mortgage.

In response to the suit, Defendants filed their Answer and a Counter-Complaint, seeking: (Count I) Declaratory Relief in the form of a Judgment that it was not in default; (Count II) Breach of Contract – Equitable Relief; and (Count III) Breach of Contract – Monetary Relief.

To its end, Defendant now seeks summary disposition under MCR 2.116(C)(10), which tests the factual sufficiency of a complaint. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

The parties do not dispute that Plaintiff notified Defendants in writing on September 13, 2013 that the property taxes were not paid. It is also undisputed that Defendants paid said property taxes on October 10, 2013. The parties, however, disagree about whether Defendants had the right to cure.

The issue before the Court is narrow. Is Defendant in default for failing to pay property taxes at the time they were due, or did Defendant cure within the time allowed under the parties' agreements? Plaintiff claims that the controlling language is found in the June 21, 2006 Mortgage. Defendant, on the other hand, claims that the controlling language is found in the 2010 Master Amendment to Loan Documents.

The June 2006 Mortgage, on which Plaintiff relies, provides (in relevant part):

**Events of Default.** Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage.

...

**Default on Other Payments.** Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien. Such failure to make payment for taxes or insurance shall constitute waste at the time such items are due and payable.

Defendants, in contrast, rely on the 2010 Master Amendment to Loan Documents, which provides, together with the February 2010 Business Loan Agreement:

**Default.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Borrower fails to make any payment within ten (10) days of when due under the Loan.

**Other Defaults. Borrower fails to comply with or perform any other term, obligation, covenant or condition** contained in this Agreement **or in any of the Related Documents** or to comply with or to perform any term, obligation, covenant or condition **contained in any other agreement between Lender and Borrower** after thirty (30) days' written notice from Lender. (emphasis added).

Michigan law is well-established that “[a] contract must be interpreted according to its plain and ordinary meaning.” *Holmes v Holmes*, 281 Mich App 575, 593; 760 NW2d 300 (2008), citing *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). “Under ordinary contract principles, if contractual language is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate.” *Holmes v Holmes*, supra at 594; quoting *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997).

Based on the plain language of the parties' agreements, the Court finds that Plaintiff's reliance on the 2006 Mortgage is misplaced. This is so because the 2010 Amendment provides that borrower has 30 days to cure following a notice of default. Because tax payments fit within the “any other term [or] obligation . . . contained in any other agreement between Lender and Borrower” (including the Mortgage), Defendants were entitled to 30 days to cure following written notice of default from Plaintiff. Any other reading would be nonsensical.

Further, Plaintiff's position that “Defendants were not entitled to any cure period or grace period” is inconsistent with the controlling language **and their own pleadings**. As stated, Plaintiff's own Complaint alleges that “Plaintiff notified Defendants of the defaults but Defendants have **failed to cure** or otherwise rectify such default.” (Complaint, paragraph 24) (emphasis added).

It makes no sense that Plaintiff alleges a failure to cure and also claims that Defendants are not entitled to any cure period. In fact, over and over in its Response to Defendants' motion, Plaintiff (in all capital letters) claims that Defendants "REFUSED TO CURE." The only logical conclusion is that Defendants did have such a right – which they exercised within 30 days of written notice.

The 2010 Master Amendment to Loan Documents (together with the February 2010 Business Loan Agreement) provides Defendants with the right to cure any non-loan payment default upon 30 days' written notice. Plaintiff provided written notice on September 13, 2013. Defendants paid the property taxes on October 10, 2013. This payment cured the claimed event of default. As a result, Defendants are not in default under the terms of the parties' agreements.

For all of the foregoing reasons and viewing the evidence in the light most favorable to Plaintiff, the Court finds that there are no material questions of fact in dispute, and Defendants are entitled to Judgment as a matter of law. Therefore the Court GRANTS Defendant's motion under (C)(10), and Plaintiff's Complaint is DISMISSED in its entirety.

The Court notes that this dismissal only relates to the default allegations contained in Plaintiff's October 1, 2013 Complaint, and the doctrines of res judicata or collateral estoppel do not apply to any other alleged defaults (whether known or unknown) not specifically pled in said Complaint.

In their Counter-Claim, Defendants also claim that Plaintiff wrongfully refused to release approximately \$50,000 from an escrowed savings account under the terms of the parties' February 2010 Assignment of Deposit Account. Under the agreement's terms, "[t]he funds from the Assignment of Deposit Account (Savings #63624423) are to be held in escrow for either tenant(s) improvements for new leases and/or loan payment(s) due."

According to the Affidavit of Defendant Ted Minasian, Defendants negotiated the terms of new leases for both existing and new tenants. As a part of those leases, Defendants made and paid for several improvements to the suites. Mr. Minasian claims a total of \$52,350.62 was spent on relevant improvements, which exceeds the approximately \$50,000 held in escrow. Defendants also attach numerous receipts and invoices establishing these claims.

In response, Plaintiff makes three arguments: (1) the monies were only to be released if Defendants used funds for new tenants; (2) there remains a question of fact whether Defendants actually paid for the improvements; and (3) Defendants were first to breach the parties' agreements.

With respect to Plaintiff's first argument, Plaintiff again misreads the parties' agreement. There is no requirement that the money be spent on "new tenants." Instead, the agreement requires the money be spent on "tenant(s) improvements for new leases." As a result, Plaintiff's interpretation is flawed.

By the Assignment's terms, any money that Defendants spent on tenant improvements for new leases (whether or not the tenant was new or a renewal) would apply. The only evidence before the Court comes in the form of Mr. Minasian's Affidavit, which establishes the amounts were so spent and exceeded the amount held in escrow. Plaintiff offers no evidence to the contrary.

Next, the Court rejects Plaintiff's argument that there remains a question of fact whether Defendants actually paid for the improvements. The payment terms that Defendants negotiated with their vendors do not matter. Further, Plaintiff has failed to present any evidence to refute the claim made in Mr. Minasian's Affidavit that the work was completed "and paid for."

Finally, Plaintiff's argument that Defendants were first to breach has already been rejected by the Court.

For all of the foregoing reasons, viewing all evidence in the light most favorable to Plaintiff, the Court finds that Defendants are entitled to judgment as a matter of law. Therefore, the Court GRANTS Defendants' motion summary disposition on its Counter-Complaint under MCR 2.116(C)(10). Defendant is entitled to a release of the approximately \$50,000 that was considered under the terms of the 2010 Assignment of Deposit Account.

This Order is a Final Order that resolves the last pending claim and closes the case.

**IT IS SO ORDERED.**

February 5, 2014 \_\_\_\_\_  
Date

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/s/ James M. Alexander  
Hon. James M. Alexander, Circuit Court Judge